BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD MITCHELL	
Claimant)	
VS.	
)	Docket No. 1,011,547
HARVEST BRAND	
Respondent)	
AND .	
)	
COMMERCE & INDUSTRY INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the August 5, 2003 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

Issues

This is a claim for an April 7, 2003 accident. In the August 5, 2003 Order, Judge Frobish denied claimant's request for workers compensation benefits finding that claimant failed to prove he provided respondent with timely notice of his accidental injury.

Claimant contends Judge Frobish erred. Claimant argues that on April 7, 2003, claimant aggravated and injured his back by stacking mineral blocks onto pallets. Claimant also argues that on that date he told his supervisor his back was hurting from the work that he was doing. Accordingly, claimant contends that he provided timely notice of the accidental back injury to respondent and, therefore, the Board should grant his request for benefits.

Conversely, respondent and its insurance carrier contend the Order should be affirmed. They argue claimant's testimony is not credible. Accordingly, respondent and its insurance carrier argue that claimant has failed to carry his burden of proof.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of the alleged April 7, 2003 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file compiled to date and the parties' arguments, the Board finds that the August 5, 2003 Order should be affirmed.

This claim hinges upon claimant's credibility. Claimant testified that on the date of the alleged accident he advised respondent's plant manager, Timothy M. Murphy, that his back was hurting from stacking mineral blocks. But Mr. Murphy disputes that testimony.

Judge Frobish had the opportunity to observe both claimant and Mr. Murphy testify and assess their credibility. The record also contains evidence other than Mr. Murphy's testimony that calls claimant's credibility into question, including the convictions for crimes involving dishonesty. And when considering all of the evidence presented at the preliminary hearing, the Judge determined that claimant had failed to prove that he provided respondent with timely notice of the back injury. The Board concurs.

Injured workers must prove the various conditions upon which their rights to receive compensation depend.¹ Because claimant does not contend that he had just cause or excuse to delay giving respondent notice, claimant was required to prove that he informed respondent of a work-related accident or injury within 10 days of the incident, which he has failed to do.² Consequently, the request for benefits must be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim or at another preliminary hearing.³

WHEREFORE, the Board affirms the August 5, 2003 Order.
IT IS SO ORDERED.
Dated this day of September 2003.
BOARD MEMBER

¹ K.S.A. 44-501(a).

² See K.S.A. 44-520.

³ K.S.A. 44-534a(a)(2).

RICHARD MITCHELL

c: Patrick C. Smith, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director